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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN
DIVISION**

DIANA TAIT, NANCY
WENTWORTH, BEVERLY
GIBSON, SHARON COBB and
TRISH ISABELLA individually
and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BSH HOME APPLIANCES
CORPORATION, a Delaware
Corporation,

Defendant.

} Case No. SACV10-711 CJC
(ANx)

**[PROPOSED] PROTECTIVE
ORDER RE USE OF
CONFIDENTIAL
DOCUMENTS AND
INFORMATION**

Assigned to:
District Judge: Cormac J. Carney
Discovery Magistrate Judge:
Arthur Nakazato

IT IS HEREBY ORDERED, based on the stipulation of the parties,
and sufficient cause being found therefor, that this Protective Order shall
be entered on the terms set forth herein and shall govern the handling of

1 documents, answers to interrogatories, responses to requests to admit,
2 responses to demands for documents, depositions, deposition exhibits,
3 pleadings, exhibits, and all other information produced or obtained by
4 any party or non-parties in the course of this action that contains
5 "Confidential Information" as defined herein.

6 **A. DEFINITION OF CONFIDENTIAL INFORMATION**

7 "Confidential Information," as used herein, means any type or
8 classification of information, whether it be a document, information
9 contained in a document, information revealed during a deposition,
10 information revealed in an interrogatory answer, or otherwise, which is
11 designated when it is produced as "Confidential" by the supplying party.
12 In designating information as Confidential Information, the party so
13 designating will make such designation only as to that information
14 which has not been made public by the designating party that it believes
15 contains trade secret, confidential, private, and/or proprietary
16 information. By designating a document, thing, material, testimony or
17 other information "Confidential," under the terms of this order, the party
18 making the designation is certifying to the court that there is a good faith
19 basis both in law and in fact for the designation within the meaning of
20 the Federal Rule of Civil Procedure 26 (g).

21 If a party claims a document produced by a third party is
22 Confidential Information ("Confidentiality Claimant") and its counsel
23 notifies the other party's counsel ("Recipient") that the Confidentiality
24 Claimant is claiming said information or thing is Confidential
25 Information, the Recipient will treat said information or thing as
26 Confidential Information pursuant to the terms of this Protective Order
27 for thirty days from the date of notice of Confidentiality Claimant's
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1 position. If Recipient disagrees that said 3rd party thing or information is
2 Confidential Information, Confidentiality Claimant will file a motion for
3 protective order within thirty days of said notice by Recipient. If said
4 motion is not timely filed, Recipient may use said thing or information
5 as they chose. If Confidentiality Claimant files a motion for protective
6 order, the thing or information, produced by a third party shall be
7 treated as Confidential Information pursuant to the terms of this
8 Protective Order until the court issues its order on said motion for
9 Protective Order. The Recipient agrees to treat the third party thing or
10 information as ordered by said court.

11 **B. PROCEDURE FOR DESIGNATING**
12 **MATERIAL AS CONFIDENTIAL**
13 **INFORMATION**

14 1. Confidential Information shall include all documents
15 provided by a party which have been designated as confidential by
16 marking the page: "CONFIDENTIAL". In lieu of marking the original
17 of documents, the party may mark the copies that are produced or
18 exchanged.

19 2. The identification of information as Confidential by a
20 supplying party shall be made at a time when an answer to an
21 interrogatory or an answer to a request for admission is served, when a
22 copy of a document is provided to the other party, and when an
23 inspection of premises or tangible things is made.

24 3. Information provided by oral testimony given in a
25 deposition may be designated as confidential by indicating on the record
26 at the deposition the testimony which the asserting party claims is
27 Confidential Information and subject to the provisions of this Order.

1 No Confidential Information may be read by anyone other than a
2 Qualified Person. The parties will inform the court reporter who is
3 stenographically recording said testimony to mark those portions of the
4 testimony they assert is Confidential Information. The party that
5 requests a portion of the deposition testimony be marked as
6 "Confidential" shall pay all amounts that the court reporter charges for
7 marking portions of the deposition transcript as "Confidential
8 Information."

9 4. If any party believes that a document or other information,
10 which has been designated as Confidential Information is not
11 Confidential Information, that party will notify the party asserting the
12 information is Confidential Information and the parties shall resolve
13 their dispute as provided by FRCP and Local Rules. If no agreement
14 can be reached, the party seeking to challenge the designation of the
15 document shall file a Motion for Relief. Until the Court resolves the
16 motion, the document will be treated as Confidential subject to the terms
17 of this Protective Order.

18 **C. QUALIFIED PERSONS WITH ACCESS TO**
19 **CONFIDENTIAL INFORMATION**

20 1. Information or material designated as Confidential
21 Information, or copies or extracts therefrom and compilations and
22 summaries thereof, may be disclosed, summarized, described,
23 characterized, or otherwise communicated or made available in whole or
24 in part only to the following Qualified Persons:

25 (a) counsel of record of parties in this action
26 and their related entities and regular and temporary
27 employees of such counsel to whom it is necessary that the
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1 information or material be shown for the purposes of this
2 litigation, and defendant's in-house counsel;

3 (b) a named party, or a present or former
4 officer, director, employee, of a party deemed necessary by
5 counsel to aid in the prosecution, defense, or settlement of
6 this action;

7 (c) consultants and experts retained or
8 employed to assist the attorneys of named parties in the
9 prosecution, defense, or settlement of this action;

10 (d) court reporters and videographers employed
11 in connection with this action;

12 (e) graphics or design services retained by
13 counsel for a party for the sole purposes of preparing
14 demonstrative or other exhibits for deposition, trial, or other
15 court proceedings in this action, subject to and conditioned
16 upon compliance with Section D herein;

17 (f) non-technical jury or trial consulting
18 services retained by counsel for a party, subject to and
19 conditioned upon compliance with Section D herein; and

20 (g) any other person only upon Order of the
21 Court or upon prior written consent of the party who
22 designated the information or material confidential, subject to
23 and conditioned upon compliance with Section D herein.

24 2. All persons listed in Section C(1)(c), (e), (f) and (g)
25 above may be given access to information or material designated as
26 "Confidential Information provided that they first confirm their
27 understanding and agreement to abide by the terms of this Protective

1 Order by completing and signing a copy of an undertaking in the form
2 attached hereto as *Exhibit A*. However, as to deposition witnesses, a
3 party's attorney may show a witness, who comes within the description
4 of Section C(1)(b) above, this Protective Order and Exhibit A thereto
5 and have them orally agree on the record to Exhibit A and sign Exhibit
6 A.

7 3. Any person may be examined as a witness during a
8 deposition concerning any information or material designated as
9 "Confidential Information" to which that person had lawfully received
10 or authored prior to and apart from this action. During examination, any
11 such witness may be shown information or material designated as
12 "Confidential Information" by a party which appears on its face or from
13 other documents or testimony to have been received or authored by that
14 witness from, or communicated to that witness by, that same party or
15 otherwise appears on its face to contain information about which it
16 appears reasonably likely that the witness has discoverable information,
17 provided that the examining party's attorney may show a witness, who
18 comes within the description of Section C(1)(b) above, this Protective
19 Order and Exhibit A thereto and have them orally agree to Exhibit A.

20 **D. RESTRICTIONS ON THE USE AND**
21 **DISCLOSURE OF CONFIDENTIAL**
22 **INFORMATION**

23 1. Any information designated as Confidential
24 Information shall not be made available or disclosed to any person other
25 than the Qualified Persons identified in Section C. Persons who, by
26 virtue of the conduct of this litigation, have knowledge of the designated
27 Confidential Information shall not suffer or permit its disclosure or that

1 of any information obtained, derived, compiled, or ascertained
2 therefrom, to any person or persons not entitled under this Protective
3 Order to receive such information.

4 2. Disclosure of all items designated as Confidential
5 Information in this action shall be solely for the purposes of this action,
6 United States District Court, Central District of California, No. SACV
7 10-711 CJC (ANx) unless and until such designation is removed either
8 by Stipulation by attorneys for the named parties or by Order of the
9 Court.

10 3. With respect to information designated as Confidential
11 Information, no copies of documents, testimony, or other information
12 shall be received, kept, or maintained by individuals other than the
13 Qualified Persons as defined above.

14 4. Any document designated as CONFIDENTIAL shall be
15 filed with the court only if it is under seal. Any party wishing to file
16 under seal any document or other item designated "CONFIDENTIAL"
17 or otherwise designated as Confidential Information shall do so in
18 compliance with Civil Local Rule 79-5.1. In addition to the written
19 application filed by the filing party, any non-filing party shall have 14
20 days from the date of filing to file a brief supporting the request that the
21 documents remain confidential and under seal and that during this time
22 period, the Court will not make any ruling on the written application.

23 5. In the event an attorney to this litigation seeks to show
24 any documents or other information designated as Confidential
25 Information to anyone other than a Qualified Person, that attorney shall
26 first advise opposing counsel at least five (5) calendar days in advance,
27 and seek to reach an informal resolution of such matters. In the event
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1 that agreement cannot be reached, the party seeking to show the
2 Confidential Information shall apply to the Court for relief from this
3 Protective Order.

4 **E. NON-APPLICABILITY TO THE TRIAL OF THIS**
5 **ACTION**

6 The terms of this Order shall continue to apply during the
7 time period in which the trial of this action occurs, but shall not apply to
8 the trial itself. Any party may, at or before the time of trial, seek an
9 Order of the Court to restrict access to particular documents or testimony
10 in the trial.

11 **F. NO ADMISSION OR WAIVERS**

12 The execution of this Order shall not:

- 13 1. constitute a waiver of any party's right to seek from the
14 Court at a future time an order which provides greater, lesser or no
15 restriction of access to Confidential documents or information; or
- 16 2. be construed as an admission or agreement that any
17 document or information designated as Confidential is, in fact,
18 confidential or otherwise entitled to any protective relief whatsoever.

19 **G. INADVERTENT DISCLOSURE**

20 Inadvertent disclosure of documents or information claimed
21 to be privileged or protected by the producing party shall be treated
22 according to the requirements of FRCP 26(b)(5)(B).

23 **H. RETURN OF DOCUMENTS**

- 24 1. The parties shall destroy any such documents produced
25 to it by the other party within sixty (60) days of final termination of this
26 litigation. Nothing in this paragraph would require a party to destroy its
27 own documents.

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2 **IT IS SO ORDERED.**

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4 DATED: March 28, 2011

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6 **ARTHUR NAKAZATO**

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8 Hon. Arthur Nakazato
9 Magistrate Judge, U.S. District Court

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1 EXHIBIT A
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3 JAMES M. HANSEN, ESQ. (SBN 180177)
4 THOMAS M. RUTHERFORD, JR., ESQ. (SBN 192242)
5 **WILLIS DEPASQUALE, LLP**
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8 Attorneys for Defendant,
BSH HOME APPLIANCES CORPORATION
9

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11 IN THE UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
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15 DIANA TAIT and NANCY
16 WENTWORTH, individually and on
behalf of all others similarly situated,

17 Plaintiffs,
18

19 vs.

20 BSH HOME APPLIANCES
21 CORPORATION, a Delaware
Corporation,

22 Defendant.
23

} Case No. SACV10-711 CJC (ANx)
} STIPULATION AND PROTECTIVE
} ORDER RE USE OF
} CONFIDENTIAL DOCUMENTS
} AND INFORMATION

}
} Assigned to:
} District Judge: Cormac J. Carney
} Discovery Magistrate Judge: Arthur
} Nakazato

24
25 I hereby certify that I have carefully read the Stipulation and Protective
26 Order Re Use of Confidential Documents and Information in the above-captioned
27 case, and that I fully understand the terms of the Court's Order. I recognize that I
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1 am bound by the terms of that Order, and I agree to comply with those terms. I
2 hereby consent to be subject to the personal jurisdiction of the United States
3 District Court for the Central District of California in respect to any proceedings
4 relative to the enforcement of that Order, including any proceeding related to
5 contempt of Court.

6 Dated this _____ day of _____, 2011. Executed at
7 _____ (city and state).

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10 _____ Print Name

11 _____ Signature
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17 Name:
18 Affiliation:
19 Business Address:
20 Home Address:
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PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF ORANGE }

5 I am employed in the County of Orange, State of California, I am over the age of
6 18 years and not a party to the within action; my business address is 725 W. Town
& Country Road, Suite 550 Orange, California.

7 On this date, I served the foregoing document described as:

[PROPOSED] PROTECTIVE ORDER RE USE OF CONFIDENTIAL DOCUMENTS AND INFORMATION

10 Said document was served on the interested party or parties in this action by placing a true copy thereof, enclosed in a sealed envelope, and addressed as noted below.

I am familiar with our firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Orange, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one working day after the date of deposit for mailing in this declaration.

- 15 (By Mail) I deposited such envelope in the mail at Orange, California. The
16 envelope was mailed with postage thereon fully prepaid.

17 (By Facsimile) In addition to regular mail, I sent this document via
18 facsimile, number(s) as listed on the attached mailing list.

19 XX (By ECF) (E-Service) I caused said document(s) to be transmitted
20 electronically to the interested parties pursuant to the ECF Service List.

21 (By Personal Service) Such envelope was delivered by hand to the below
22 addressee.

23 (By Overnight Mail) I arranged for such envelope was delivered to the
24 following addresses by overnight mail.

Executed on March 28, 2011, at Orange, California.

24 I declare under penalty of perjury under the laws of the State of California that the
25 above is true and correct. I further declare that I am employed in the office of a
member of the bar of this court at whose direction the service was made.

/s/ Donnal J. Hunt

MAILING LIST

Case Name : TAIT and WENTWORTH v. BSH HOME APPLIANCES
CORPORATION
Court : USDC – SOUTHERN DIVISION
Case No. : SACV10-711 CJC (ANx)

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